

LPFM VIABLE TIME SHARE PLAN – FACT SHEET

Proposal for MB Docket 19-3

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AT ISSUE:

Draft NPRM at para. 57:

We tentatively conclude that Section 73.872(c) should be modified to specifically permit point aggregation discussions and agreements at any point before the Bureau implements the involuntary time-share procedures, including prior to tentative selectee designations, if any such agreement is conditioned on each of the parties subsequently achieving tentative selectee status. Currently, there is no rule that prohibits LPFM applicants from each filing a separate LPFM application with the intended goal of arriving at a time-sharing agreement, if the agreement is conditioned on each applicant becoming a tentative selectee. With one exception, there are no anti-collusion rules applicable to the LPFM comparative selection process. We believe organizations interested in filing an LPFM application should have leeway to communicate with other eligible organizations about maximizing their chances to acquire LPFM construction permits and to explore potential time-share construction and operating efficiencies. We believe this type of cooperation can help ensure increased service to the public.

REC POSITION:

While LPFM did face some gamesmanship in the first (2000~2001) window, there was not the level of it as there was in the 2013 window. Because of the availability of second-adjacent channel waivers as a result of the LCRA, many metro areas had channels that were not available in the first window. Because of the elimination of the IF protection requirement in the *Fifth Report and Order*, channels like 268 (101.5) became available in Los Angeles. This substantially increased wide-area availability in major metro areas including some MX groups where two proponents can be as far as over 40 miles apart. This caused top-10 markets to be very attractive in this window and thus the increased likelihood for gamesmanship. What artificially inflated the scores was the requirement for a 10-hour minimum. We saw two different applications of how this 10-hour minimum was abused:

In Los Angeles, we saw one time share proponent ask for 120 hours of time and four other “token” applicants ask 12 hours each, each from different locations aggregating 25 points. All of the applications were boilerplate and specified different locations (mainly leased towers except for the location that had the 120 hours, which proposed from a residence in the hills). This group would eventually split up and of which, only one of the stations is on the air for four hours per night reportedly broadcasting mainly a dead carrier or a looped program. The other stations are not on the air, including the one that originally asked for 120 hours (despite the station on the air has already been warned by the Division about identifying as the group that asked for 120 hours).

In Philadelphia, we saw one time share proponent ask for 88 hours and then two other proponents with similar sounding names ask for 10 points each with all three applicants being co-located at the same facility and another group brought on for 60 hours. Today, the three Germantown stations do keep a distinct identity but they do use joint resources that are centered around the station getting 88 hours. They are doing a great job in their community but the method of how they obtained their grant was questionable. Questionable enough that the competing group took the FCC to court. Under REC’s proposed plan, the 88-hour group and the 60-hour group would have still prevailed, but the selection process would have been more fair.

In Boston, one applicant proposed 138 hours along with a second applicant that proposed 36. This allowed them to aggregate 10 points. Following the grant, the time schedule was changed to give the primary applicant 143 hours and the other applicant 25 hours in the middle of the night, 5 days a week. Both licensees are now co-located and have close call signs. No information can be found about the licensee with only 25 hours.

In all of these cases, even though it may be not be confirmed, it is suspected that there may have been discussions prior to the submission of a time share agreement in order to stack points to gain an advantage. In Los Angeles, the group was not initially successful because of the massively wide area of where the channel was available thus causing an even larger group (40 points) to be established.

These are examples of why the Bureau's proposal that no rules regarding collusion should exist and further, that negotiating aggregation very well ahead of time is now being endorsed and encouraged.

REC does not find this approach to be fair as it does prematurely stack the deck against other potential, distinct and diverse voices who may not be "in the club". Los Angeles was able to stack with 12-hour proponents and Philadelphia went all the way to 10.

In order to prevent this type of gamesmanship, we must take away the tools that are triggering such behavior. In this case, the 10-hour minimum on time share agreements. The FCC is proposing to backstop the "clarified" rules about collusion by not reassigning time that is "abandoned" through a permit or license expiring and then bringing in a new licensee through a future "mini-window".

No one will want a mini-window if an LPFM station is only operating from 2AM to 4AM, Monday through Friday, as is the case of one station in Miami.

REC is requesting that the Commission bring directly to the NPRM, the concept presented in this document that will assure that safeguards are put in place that not only assure that distinct and diverse groups will receive LPFM construction permits, but to assure that they were more likely to be obtained fair and square from the starting gate and that a new entrant would be able to obtain any abandoned time and that the time they obtain is something viable that would justify a \$12,000+ investment to start a station.

With that, we propose an alternative concept to Paragraph 57.. The Viable Time Share Group.

PROPOSED REQUIREMENTS FOR VIABLE TIME SHARE GROUPS ("REC 5/5/36" PLAN)

Under the REC proposed Viable Time Share Plan, all new LPFM time sharing groups must meet the following requirements:

- Propose a minimum of 36 hours per week.
- At least 5 contiguous hours must be proposed between 6AM and 11:59PM.
- Must specify operation at least 5 days per week between 6AM and 11:59PM.
- All time between 6AM and 11:59PM Monday through Sunday [Saturday?] must be allocated.
- Operation between 12 Midnight and 5:59 AM can count towards the 36-hour minimum but not towards the "5 hour" or "5 day" requirements.
- Co-located sites are prohibited. All sites must be separated by at least 500 meters.
- By design, there will never be more than 3 time share proponents per group (thus meaning a maximum of 15 points aggregated).
- In the event of a tie, aggregate the number of years of documented local presence for each group. The group of organizations with the highest aggregated years of local presence will win the group.

OTHER RELATED SUPPORTING RULE CHANGES

- Strike language in §73.870 that permits a facility move of over 5.6 kilometers if the proposed new site is co-located with an existing time share partner. (*Since time share proponents can no longer be co-located.*)
- For the third LPFM window, adjust the 3-party involuntary time share slots by one hour to 3:00am~10:59am, 11:00am~6:59pm and 7:00pm~2:59am. (*To accommodate an involuntary time share that meets the requirements of the 5/5/36 Plan.*)
- Make third window involuntary time share licenses renewable. (*Incompatible with the mini-window concept as stations awarded in the subsequent mini-window will be renewable.*)

MINI-WINDOW

- Upon finality of a cancelled original construction permit or license, the facility remains “protected” using the maximum permitted facilities at those geographic coordinates. (similar logic to Note in §74.1204(a) regarding protection to LPFM facilities). Protection remains in place until after the mini-window is closed and which time the proposal(s) filed in the mini-window would be protected to their maximum permitted facilities until licensing when their actual facility will be protected.
- Hours of operation of cancelled station will remain protected. Surviving stations may enter into “universal” agreements for all other hours.
- There is no time limit (3 years, 4 years, etc.) where the cancelled facility would not be subject to the two previous bullet points.
- Bureau would open a “mini-window” for the hours of the cancelled station. (This is why it is important that we have viable hours available).
- Applications not required to have any technical relationship with the deleted facility (i.e. does not need to be within 5.6 km) but must be mutually exclusive to one or more of the existing time-share licensee(s)/permittee(s).
- Must meet all §73.807/§73.825 however if the cancelled facility was short-spaced to a subsequently authorized FM translator, the new facility can still be authorized if it does not decrease that spacing. There may be an issue with subsequently authorized full-service facilities depending on the interpretation of the LCRA (is this a considered a “new” facility or a “modification”? / LCRA does not address LPFM stations protecting translators).
- If there are mutually exclusive applications filed in the mini-window, only a single applicant will be selected (“winner-take-all”). Winner based on points and then by local presence date.
- We could look at a potential arrangement if multiple applications are received in the mini-window that are both MX to the existing station(s) but are not MX to each other, the other applications could be granted with the same hours (thus, simultaneous operation).

SAMPLE VIABLE TIME SHARE SCHEDULES

	VIAIBLE OPERATING PERIOD (5 HOURS PER OPERATING DAY REQUIRED)																								
	3A	4A	5A	6A	7A	8A	9A	10A	11A	12N	1P	2P	3P	4P	5P	6P	7P	8P	9P	10P	11P	12M	1A	2A	3A
Monday	STATION A										STATION C								STATION B						
Tuesday	STATION A										STATION C								STATION B						
Wednesday	STATION A										STATION C								STATION B						
Thursday	STATION A										STATION C								STATION B						
Friday	STATION A										STATION C								STATION B						
Saturday	STATION A																	STATION B							
Sunday	STATION B										STATION C														

	VIABLE OPERATING PERIOD (5 HOURS PER OPERATING DAY REQUIRED)																								
	3A	4A	5A	6A	7A	8A	9A	10A	11A	12N	1P	2P	3P	4P	5P	6P	7P	8P	9P	10P	11P	12M	1A	2A	3A
Monday	STATION B			STATION A										STATION C					STATION B						
Tuesday	STATION B			STATION A										STATION C					STATION B						
Wednesday	STATION B			STATION A										STATION C					STATION B						
Thursday	STATION B			STATION A										STATION C					STATION B						
Friday	STATION B			STATION A																	STATION B				
Saturday	STATION B			STATION C										STATION B											
Sunday	STATION B			STATION C										STATION B											

PROPOSED RULE CHANGES RELATED TO “5/5/36”/VIABLE TIME SHARING

- Section 73.850 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§73.850 Operating schedule.

* * * * *

(b) All LPFM stations, except those in time share agreements executed prior to [date] pursuant to paragraph (c) of this section and Sec. 73.872, are required to operate at least 36 hours per week, consisting of at least 5 contiguous hours of operation per day between the hours of 6:00 AM and 11:59 PM local time on at least 5 days per week; however stations licensed to accredited educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

* * * * *

(c) * * *

(1) The license and the prospective licensee(s) shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement must be in writing and must set forth which licensee will operate on which of the hours of the day throughout the year. Such agreement must not include simultaneous operation of the stations and must meet the minimum operating schedule pursuant to paragraph (b) of this section. Each licensee must file the same with each application to the Commission for initial construction permit or renewal of license. Time share agreements shall be signed by hand and not electronically. Such written authorizations become part of the terms of each station’s license.

2. Section 73.870 is amended by revising paragraph (a) and add new paragraph (h) to read as follows:

§73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LPFM station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. These distance limitations do not apply to an amendment or application proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station; provided, however, that the proposed relocation is consistent with all localism certifications made by the applicant in its original application for the LPFM station. Minor changes of LPFM stations may include:

(1) Changes in frequency to first, second or third-adjacent channels or I.F. frequencies, or upon a technical showing of reduced interference, to any frequency and (2) Amendments to time-sharing agreements pursuant to Sections 73.850(b) and 73.872, including universal agreements that supersede involuntary agreements.

* * * * *

(g) [This paragraph will be discussed in comments as it relates to site assurance]

(h) *Mini-window*: In the event a license or permit that was a party to a time-sharing agreement authorized after [date] is cancelled, expired or revoked and the action has been finalized, the Commission may open a limited filing window ("mini-window") by public notice pursuant to this paragraph for the time that was made vacant by the previous action.

(1) The former facility shall remain protected from the time the action has been finalized to the close of the mini-window. Contingent LPFM and FM translator proposals that are mutually exclusive with the former facility shall not be entertained.

(2) Time-sharing proposals between existing licensees or permittees in the same time-share group as the former facility may not propose to reapportion time previously authorized to the former facility.

(3) Proposals for new stations made during the mini-window must be mutually exclusive to one of the remaining time-share proponents. Proposals that do not meet the minimum distance separation requirements of Section 73.807 may be authorized if it does not lessen the spacing to stations authorized subsequent to the former facility.

(4) If a single application is received that meet the requirements of paragraph (h)(3) and is not mutually exclusive with any other applications filed during the mini-window, it shall be considered singleton. If multiple applications are received that meet the requirements of paragraph (h)(3) and are not mutually exclusive with other applications filed during the mini-window, each application will be considered a singleton.

(5) If two or more applications that meet the requirements of paragraph (h)(3) and are mutually exclusive with other applications meeting the requirements of paragraph (h)(3) filed during the mini-window, the applicants shall be awarded points in accordance with Section 73.872(b) and the applicant with the highest number of points shall be the tentative selectee. In the event of a tie, the tentative selectee shall be the applicant that has been local as defined in Section 73.853(b) of this part, for the longest uninterrupted period of time.

(6) The tentative selectee or selectees shall be initially awarded the time that was vacated by the former facility.

3. Section 73.872 is amended by revising paragraphs (c)(1), (c)(2) and (c)(3); redesignating paragraph (c)(4) to (c)(5) and adding new paragraphs (c)(4), (c)(6) and (c)(7); revising paragraph (d)(1); amend the fifth sentence in paragraph (d)(2); and strike the eighth sentence in paragraph (d)(2) to read as follows:

§73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(c) *Voluntary time sharing.* If mutually exclusive applications have the same point total, two or three of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the time, a time share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms and conditions of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise time-share proponents' points will be aggregated.

(1) Time-share proposals shall be in writing and hand-signed by each time-share proponent and submitted with each application, and shall satisfy the following requirements:

(i) The proposal must specify the proposed operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents unless the station was originally part of a mini-window o;

(iii) Each time-share proponent must propose to operate at least 36 hours per week including a minimum of 5 contiguous hours of operation between 6AM and 11:59PM at least 5 days per week; and

(iv) The proposed transmitter site for each time share proponent must be separated by a minimum of 500 meters.

(2) Where a station is authorized pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted will be permitted only where a written agreement hand-signed by each time-sharing permittee and licensee and complying with the requirements in paragraphs (c)(1) through (iv) of this section is filed on FCC Form 319 individually by each station, prior to the date of change.

(3) For time-sharing agreements authorized prior to [date], the parties to the time-sharing agreement may apportion among themselves any air time that, for any reason becomes vacant.

(4) [Redesignate as (5)]

(4) For time-sharing agreements authorized after [date], if any air time that, for any reason becomes vacant, that time shall not be reapportioned and will remain reserved for a mini-window pursuant to Section 73.870(h) of this part.

(5) * * * * *

(6) [related to a different part of the NPRM that will be discussed in comments.]

(7) In the event of multiple time-share agreements of equal aggregated points, the tie will be broken by adding the determining of number of days each applicant within a time-share agreement has been local, as defined in Section 73.853(b) of this Part for the longest period of time. The tie will be awarded to the group that has the highest sum of days among all members of the time-share group.

(d) *Involuntary time-sharing.*

(1) If a tie among mutually exclusive applications is not resolved through voluntary time sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability. Applicants with tied, grantable applications will be eligible for equal, concurrent, renewable license terms.

(2) * * * * * If there are three tied, grantable applications, each applicant must rank their preference in the following 8-hour time slots: (1) 3:00 am – 10:59 am, (2) 11:00 am – 6:59 pm and (3) 7:00 pm – 2:59 am. * * * * * ~~The Commission shall award time in units as small as four hours per day.~~ * * * * *

APPENDIX

POINT STACKING & NON-VIABLE TIME SHARE EXAMPLES

MX Group #27 – Los Angeles (101.5, 40 points, “NHMC Group”)

- Ballet Folklórico Ollin (19 hours)
- Boyle Heights Arts Conservatory (26 hours)
- Catalyst Long Beach (20 hours)
- Los Angeles Academy of Arts and Enterprise (38 hours)
- National Hispanic Media Coalition (20 hours)
- Prism Church Los Angeles (19 hours)
- Emperor’s Circle of Shen Yun (17 hours)
- Edgewood High School (10 hours)

MX Group #27 – Los Angeles (101.5, 25 points, “Dublab Group”)

- Future Roots (120 hours)
- Machine Project (12 hours)
- Materials & Applications (12 hours)
- Echo Park Film Center (12 hours)
- Craft and Folk Art Museum (12 hours)

MX Group #185 – Boston (94.9, 10 points)

Original granted time share (meets guideline as “viable”):

- ZUMIX, Inc. (M-F 12a-10a, 4p-12a; Sat/Sun 24h, 138 hours)
- Winthrop Art Association Programs (M-F 10a-4p, 36 hours)

Time share change after grant (BMPL-20160912AAF, non-viable):

- ZUMIX, Inc. (M-F 5a-12a, Sat/Sun 24h, 143 hours)
- Winthrop Art Association Programs (M-F 12a-5a, 25 hours)

Winthrop co-located with Zumix when this schedule was proposed.

MX Group #304 – Philadelphia (92.9, 20 points, “G-Town Group”)

- G-Town Radio (88 hours)
- Germantown United CDC (10 hours)
- Germantown Life Enrichment Center (10 hours)
- South Philadelphia Rainbow Committee (60 hours)